excepting such wills from revocation by marriage. See 1914 GA. ANN. CODE, § 3923; 1902 MASS. REV. LAWS, c. 135, § 9. That decision might also be thought to imply that the statute simply enacts a presumption that marriage is a revocation. If so the principal case raises the question whether that presumption may be rebutted by evidence *dehors* the will. Such evidence may be regarded as introduced, not to vary the terms of the will, but to show that an apparent revocation was not so intended by the testator. Extrinsic evidence is properly admitted for this purpose. *Managle* v. *Parker*, 75 N. H. 139, 71 Atl. 637; *Gardner* v. *Gardner*, 177 Pa. St. 218, 35 Atl. 558. *Cf.* *Scoggins* v. *Turner*, 98 N. C. 135. It is similarly admissible to rebut the mere presumption raised by marriage under the law of some jurisdictions. *Miller* v. *Phillips*, 9 R. I. 141. See *Tyler* v. *Tyler*, 19 Ill. 151. But if the statute is absolute, the introduction of parol evidence is forbidden by rule of substantive law. *Ingersoll* v. *Hopkins*, 170 Mass. 401, 49 N. E. 623; *Ellis* v. *Darden*, 86 Ga. 368, 12 S. E. 652. See 1 JARMAN, WILLS, 6 Am. ed., § 112. If the statute enacts a presumption, the court in the principal case misapplies the parol evidence rule. But if it is absolute, the court is clearly right in refusing to construe it as admitting of further exceptions.

BOOK REVIEWS

TRAINING FOR THE PUBLIC PROFESSION OF THE LAW. By Alfred Zantzinger Reed. Being Bulletin No. 15 of the Carnegie Foundation for the Advancement of Teaching. New York: Scribner & Son. 1921. pp. xviii, 498.

The reviewer, as one academic writer to another, must say much that is complimentary of this report. It is a "patient, scholarly, and serious effort to trace the development of American legal education and the relation of the law school to the practice of the law." [1] Certainly the tracing of this development as a matter of history is the strong point of the work. Of the eight parts into which the volume is divided, the first seven are devoted to the history of the development of legal education and of the relation of the law school to practice. In this historical matter, and in the statistical tables of the appendix, there is a great fund of information with which future articles, local surveys, and bar association reports may be adorned. This portion of the report will stand as an authoritative source for facts and deductions concerning the history of legal education in the United States.

The efforts of the author at recording history are not, however, the end and aim of his work. Rather is it "to point out certain broad lines along which legal education and methods of admission to the bar must develop if the profession of the law is to fulfill its true function." [2] The relative brevity of Part VIII, we are told, "is not due to a belief in the value of antiquarian research for its own sake. Past events have been related at all only for the purpose of throwing light upon events still to come. . . . A generation of young men, stirred by the recent conflict, will soon assume control. . . . It is for these newcomers, and for the older men who see that this spirit must be reckoned with, that this study has been undertaken." [3] It is, therefore, a careful appraisement of what the author has given us as a guide and inspiration for the future which may very properly be made the subject of this review.

The author seems to recognize three fundamentally important subdivisions of his subject: *First*, What differentiations occur among lawyers? Obviously,

[1] Pp. xvi, xvii. [2] P. xvii. [3] Pp. 6, 7.

before you begin to educate men to be lawyers, you must conceive of the finished product, or if there are different sorts of the finished product, they should be known. *Second*, we must know "the nature of the law which is to be taught." [4] *Third*, the educational machinery which has already come into existence to meet the demand for legal education must be known, classified, and weighed. We will attempt to appraise the author's ultimate conclusions regarding the present and the future on these three lines.

"A unitary bar," we are informed, "not only cannot be made to work satisfactorily, but cannot even be made to exist"; [5] "the most clearly indefensible of these formulas [which have been too easily accepted by the generation that came into power about 1890] has been the assumption that all lawyers do, and ought to, constitute a single homogeneous body — in common parlance, a 'bar.'" [6] Well, then, what have we got? What are the *de facto* differentiations which exist among lawyers? This is important, because on this may rest that differentiation in legal educational effort on the part of law schools, which, we are told, are "wrangling for possession of a field too large for any of them to cover in its entirety." [7] The author makes no clear answer to the question. He writes of the functional division maintained in France between the *notaires*, *avoués*, and *avocats*, and the different educational qualifications applicable to each. He notes the difference between the English solicitor and the barrister, and the difference in training for each. He fails, we think, to accept the statements of Mr. Justice Riddell, that while in Ontario one may be admitted both as a solicitor and a barrister, yet it is true that a small percentage of those admitted as barristers and solicitors do a large percentage of the barrister work and that a *de facto* functional division is maintained. When he comes to the United States, the author seems bewildered. We do not know whether he finds here a rudimentary functional differentiation among lawyers or not. He says, "It is not even certain that a rigorous functional division of the bar will ever develop." [8] "The principle of a functionally divided bar is something which we may or may not be able eventually to introduce." [9] Then we have this remarkable hint: "The dividing line between the different types of lawyers may be determined by the economic status of the client, rather than by the nature of the professional service rendered." [10] This is merely a circumlocutionary method of saying that lawyers may be divided into those who serve the rich and those who serve the poor. We are told that "differences in training and in social standing are recognized, and we have actually a differentiated profession." [11] In another passage we find inferentially the suggestion that bar examinations might be "adjusted to the training that is practicable for the particular type [of law school]" [12] — that is to say, that the graduates of university law schools teaching national law shall have one type of bar examination, while the graduates of part-time or night law schools emphasizing the local law shall have another. It is also suggested that in the case of "younger applicants for admission to bar associations, the requirements for membership might well be based upon the requirements for graduation already enforced in the more advanced group of law schools." [13] From these passages it might be inferred that Mr. Reed regards lawyers as now divided into two groups: one composed of the socially elect, having a liberal college education and graduates of university law schools teaching the national law, and serving the rich; the other, inferior socially, schooled by the part-time or night law school emphasizing the local law, and

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[4] P. 4. [5] P. 418. [6] P. 417. [7] P. 418.
[8] P. 419. [9] P. 419. [10] P. 419. [11] P. 64.
[12] P. 418. See also p. 435.
[13] Quoted from "Partial Summary" of the BULLETIN reviewed. See original BULLETIN, pp. 61, 229.

serving the poor; and that this differentiation would (and possibly should) be promoted by the organization of local bar associations for each class and separate bar examinations for the admission to practice of each class, with presumably a different designation for the members of each. Such an analysis of our present situation and such a program for emphasizing it in the future cannot be too severely condemned. It is superficial. It is false. It is impolitic. It can only end in disaster to the graduates of university law schools and, therefore, disaster to the university law schools themselves. Successful lawyers are quite likely to have some social position, but we venture the assertion that their social position is usually the result of their success in practice. It is a comparatively slight contributing cause to the success itself. Successful lawyers do serve the rich. They are far from leaders of the first rank, however, unless they maintain so independent a position in the community that any interest feels safe in employing them. Witness Mr. Hughes' employment by the miners in the Indianapolis cases. We doubt Mr. Reed's deduction that the strong and successful lawyers of the United States can be separated from the weak and less successful ones on the basis of their law school education. We would not accept, or advise any one else to accept, such a proposition without an actual statistical investigation which would reveal good grounds for making it. Mr. Reed entirely overlooks the fact that the division of lawyers into the strong and successful on the one hand, and the weak and mediocre on the other (which is all he is driving at), is a matter of competition, not possible to determine perhaps until fifteen or twenty years of arduous work at the bar has been accomplished. When that period of competition has passed, the original educational effort of college and law school, while it may leave some marks, fades out very materially. It certainly is no longer controlling and no differentiation can be based upon it. If the differentiation which Mr. Reed suggests now exists, or ever exists sufficiently to become apparent, a contest will ensue between the two groups for mastery. As Mr. Reed himself says: "Anything that looks like a claim on the part of the well-bred to constitute a separate interest in the state provokes violent opposition from a still sensitive democracy." [14] The issue between the groups would not long be in doubt. The lawyers who have social standing, degrees from a college and university law school, and who come forth anointed to serve the rich, will find, as Mr. Reed himself concedes, that "the great majority" of lawyers and politicians belong to the opposing group.[15] Mr. Reed might as well have added "the great majority of judges, as well." The learning of the university law schools would be sneered out of court as mere theory. The social superiority of the university law school graduate would only fan the flames of hatred and opposition. Politicians, judges, and the majority of lawyers controlling bar associations and other organizations would make successful war upon the university law school graduate. The rich would very soon cease to employ a group whose social and educational superiority would merely have earned them the enmity of those who were in power. Indeed the university law school graduate would soon find that the way to success in the law would be to disown his higher education and seek to be associated with the group which produced the politicians, the judges, and the majority of lawyers, — many of them no doubt quite as able as those in the circle of university law school graduates. For one who gives us, as the central idea of his work, the proposition that we cannot have a unitary bar, that "the differentiated profession is something that we already have and could not abolish if we would," [16] Mr. Reed's conception of what that differentiation is, or what it may or ought to become, and how to achieve it, is not only vague and unconvincing, but positively erroneous and inimical to the group of university law school graduates which he is most anxious to protect. Mr. Reed

[14] P. 228. [15] P. 417. [16] P. 419.

does well the academic work of analyzing and recording the dead past, but when it comes to stating our present condition and blazing the way for the future he is an inadequate, if not positively dangerous, adviser.

The author having failed satisfactorily to enlighten us regarding what kinds of lawyers there are or may be, so that the education of the different kinds may possibly be arranged for, let us see what he does with the fundamental question of what is the law to be taught? Mr. Reed fully recognizes that the law which the lawyer practices is the law which is enforced in a particular jurisdiction, and that we have in the United States forty-nine of these individual law-administering and law-making bodies. Here is one of the most significant and overpowering facts which faces all law teachers and students. It would be impossible to exaggerate the predominance of this fact in legal education. Does Mr. Reed face the fact? Does he impartially and dispassionately consider what this fact means, — what its ramifications are, and the extent to which it enters into every problem of the future, because each year it becomes, if possible, a more overwhelming and significant fact, and one which can be less and less ignored? Not at all. Whenever he meets it he tries to bury it under words of the text which seek only to minimize and explain away its existence. To Mr. Reed it is an unpleasant condition which we had best say as little as possible about, and when we do, to say that which conceals the fact from ourselves. Thus we are told that "This danger that American law might disintegrate into local fragments [as if it had not already so disintegrated!] has, on the whole, been averted by the respect which the lawmakers of each state accord the law of other jurisdictions. In the domain of judge-made law, the decisions of other state courts, or of the Supreme Court of the United States, are more than mere guides. They are treated by the courts as possessing actual authority as precedents, subordinate only to that possessed by a well-established line of decisions in their own states." [17] The last part of Mr. Reed's statement destroys the effect of what he started out to say. When a given state has two hundred and fifty or three hundred volumes of Supreme Court reports and a century of continuous turning out of decisions and a compilation of legislative acts extending over the same period, the "well-established line of decisions" in the particular jurisdiction covers matters relatively so numerous and of such importance that the decisions of other state courts or the decisions of the United States Supreme Court are often not useful for any purpose. Under these circumstances the rule that decisions from other states are more than mere guides has little application if it be in fact true. We doubt whether judges of supreme courts generally would concede that the decisions from other states or from the Supreme Court of the United States were more than mere guides, or that they possessed actual authority as precedents. They would, we think, declare them to be merely guides, to be followed or not, according to whether the bases on which they rested seemed proper. Then Mr. Reed declares that "a body of generalized national law, deduced in a critical spirit from the best practices of the various courts, is being slowly built up by these scholars [referring to the scholars in the university law schools which purport to teach the so-called national law]." [18] It is true that a scholar here and there at the present day, like Williston or Wigmore, is doing work of sufficient magnitude to have some influence for uniformity in jurisdictions which have not agreed with them or to establish a rule of law where it had not yet been declared. We doubt whether the author's statement is true unless he includes among his scholars those who write the articles in encyclopedias of law and compile the digests. The author entirely fails to weigh against these scholarly efforts the overwhelming fact that day after day throughout his practice the lawyer has more and more to

[17] P. 33. [18] P. 34.

discard what forty-eight other states are doing and to concentrate on what the law is, or what it ought to be, in the single jurisdiction where he is practising. He has to do this to the same extent that English lawyers have done it in every century since the time of Littleton. He consults Williston or Wigmore or the encyclopedia of law or other up-to-date textbooks, not to find out what any rule of so-called national law may be, but to discover, if possible, through the citations in the footnotes what the law in the jurisdiction in which he practises may be. If that law be a departure from the so-called national law of the university scholar, he may consider the possibility of overturning it, but always it is the situation in the particular jurisdiction that he must deal with. All the facts of its history, the emotional element of the problem as it may appeal to particular judges at that time on the bench in that jurisdiction, are matters which he must weigh and consider, and they cause him to turn his back daily upon anything like the so-called national law of the university law school. The scholarly productions of the national law schools may be "struggling for mastery" [19] over the local law, but it is a feeble struggle. They haven't a chance. They only succeed here and there in spots. The Harvard Law School graduate who has persisted in practice and who appears with a fair degree of frequency before courts of last resort, finds himself making some of his most desperate efforts to establish in the court propositions which would be accepted in the classrooms of the Harvard Law School without debate. The "struggle for mastery" of the national law school comes to an end in this conclusion of Mr. Reed: "Should university law schools or other institutions in which this national law is being cultivated ever be accorded a recognized responsibility for the education and testing of applicants for admission to practise, exercised independently of the judges or of other practitioners, this will mean that the American state has recognized, or in the technical language of jurisprudence has 'received,' scholars' generalized common law in much the same way that their elaborated Roman law became the law of Continental Europe." [20] Well, there isn't a chance that the national law schools will ever be accorded such a right, or that the general common law of the law schools will ever be "received" in the manner suggested. The whole sentence expresses a hope so feeble that it might as well never have been uttered. It is strange indeed that one who is so positive that we have not got, and cannot have, a unitary bar, even in a given locality, is so positive that we have, in some practical sense, or even some possible sense, a *unitary law* for forty-nine sovereign law-administering and law-making jurisdictions. It is strange indeed that a writer who realizes that the law of England to-day is different from the law of any of the states because these states split off from England one hundred and forty years ago, cannot perceive that New York and Illinois, which had a common stem far antedating the Revolution, have no more a common system of law than Massachusetts and England to-day. Indeed, if he looked at the facts as they appear from the statutes and decisions, he would, we believe, find that the law of Massachusetts was nearer to that of England than was the law of Illinois to New York. Mr. Reed refuses to look squarely at the fact that the splitting off from a common stem and a separate legal and judicial history which causes English law to-day to be, for the purposes of legal education at least, a different system from the law of any state, is decade by decade surely causing the systems of law developing and being administered by our different states to become different. How long a time must elapse before Mr. Reed will perceive that the two systems have become different and that legal education must take cognizance of the fact? Mr. Reed notes that formerly the universities in England were interested in the civil or Roman law of the continent, while the Inns of Court sustained their narrow and parochial interest

[19] P. 35.

[20] P. 35. See also p. 418.

in the decisions handed down by the courts at Westminster. He knows what happened, for he tells us. The Roman or civil law and the universities which taught it were sidetracked, and their influence in legal education became negligible. Yet Mr. Reed seems incapable of observing that the so-called national law, as distinguished from the law of each one of forty-nine local jurisdictions, is headed toward a position sufficiently like that which the Roman law occupied at the English universities to be significant. If American university law schools hang on too long to the idea of a national law, they will become sidetracked and their influence will decline, while the body of teachers who make it their business to train the student to the greatest possible effectiveness in the law which he as a practitioner must know and use will steadily increase in importance and influence. The failure to grasp so obvious a principle causes us to doubt Mr. Reed's skill in using past events "for the purpose of throwing light on events still to come."

Perhaps the most extraordinary conception of the entire work is that the study of local law must always remain narrow, practical, and inferior, and be carried on by part-time or low-standard schools, while the study of national law or general common law is necessarily associated with university schools which maintain the highest and best educational standards. Mr. Reed thinks that the best argument for the national school is that it deals with the law "as it may become," rather than with the law "as it is."[21] So far as Mr. Reed deals with what has been, or the conditions which now exist, we do not differ with him, but the apparent assumption that this condition of affairs must or should continue is subject to objection. We are amazed at Mr. Reed's inability to perceive that it is the local law school carried on with the same standard of learning and ability which Langdell and his associates brought to their task, rewriting the law of the local jurisdiction as Langdell and his associates rewrote the local English common law, which will produce a legal education that will dominate the law and lawyers in the given jurisdiction. Such a law school may be conducted with case books containing the best judicial opinions to be found at any time in the English-speaking world, provided always that such decisions are relevant and material to the law of the local jurisdiction. It may give the same training in legal reasoning as does the national law school of to-day. It may be far more effectively interested in the law as it ought to be than the national law school of to-day, because it will be working for specific changes in a particular jurisdiction where the law school exists and where it has a direct influence upon lawyers, judges, and legislators. It might even be claimed that it would in time produce greater uniformity, for with our tendency to copy the best near at hand there can be little doubt that a local jurisdiction, fed with the springs of local law schools attaining the present standards of university national law schools, would set the pace for many other American jurisdictions. Such a conception of a new creative movement in legal education finds no place in Mr. Reed's work. This is merely illustrative of the fundamental defect of his efforts. They are sterile with respect to the problems and developments of the future.

The author lays much stress upon his finding that all legal education in this country is now through law schools, and that these may be arranged into different groups depending upon the sort of legal education given and the pre-legal educational requirements demanded. We are developing toward two widely divergent classes of schools,— the university law schools, giving a three years' course and requiring for admission a college degree, or something equivalent, on the one hand, and the part-time or night law schools which only require the minimum acceptable to the bar examiners, on the other. He suggests that in the night or part-time law schools the "local law is emphasized," while the

[21] P. 291.

university law schools are national schools dealing with the general common law. Here is a clear statement of our present status. What are we to do with it? Merely promote "imitation and perfection of detail"? Oh, no. "We stand now," he says, "on the brink of another creative period." [22] Our second war with England and our Civil War were "followed by periods of original creation in legal education. These in turn were followed by less significant periods devoted mainly to imitation and perfection of detail. It requires no great effort of the imagination to perceive that we stand now on the brink of another creative period." The long historical evolution of legal education as it developed in the United States and the final analysis of the present types of law schools have all been carefully worked out, so that we may intelligently emerge from a period of "imitation and perfection of detail" to "another creative period." What line then is this creative effort to take? What are the general principles in accordance with which this creative effort is to proceed? What advice and direction are given to the "generation of young men stirred by the recent conflict"? We search in vain for any answer to these questions. The only suggestion which we find is that the part-time or night schools be strengthened by lengthening their course to four years and beyond. This is an excellent suggestion, but does it fulfill the promise of a new creative effort? Is this the beacon which is to fire the imagination of the generation of young men stirred by the recent conflict? ALBERT M. KALES.

LE DROIT PÉNAL INTERNATIONAL ET SA MISE EN ŒUVRE EN TEMPS DE PAIX ET EN TEMPS DE GUERRE. By Maurice Travers. Paris: Librairie de la Société du Recueil Sirey. Vol. 1, 1920, pp. 670; vol. 2, 1921, pp. 684.

The above volumes constitute a part of a comprehensive treatise on the subject of international criminal law. Sections 1–101 develop the general principles which, in the opinion of the author, underlie the subject. The balance of the work, so far as it has appeared, cover the subject of jurisdiction. Sections 102–664 are devoted to a consideration of the question to what extent jurisdiction may be based (1) upon the fact that the act was committed within the territory of a particular state; (2) upon the nature of the act committed; (3) upon the nationality of the injured party; (4) upon the nationality of the offender; (5) upon the mere presence of the offender within the state; (6) upon a combination of two or more of the above grounds. Sections 665–974 deal with the exceptions to the general principles governing jurisdiction. Three appendices follow, discussing, respectively, the question of complementary jurisdiction, based upon connexity, indivisibility or complicity, the effect of territorial annexation and changes of nationality upon the application of criminal law, and the application of criminal law with respect to "industrial, artistic and literary property."

The subject-matter is set forth with great thoroughness in all of its aspects. Much space is given, for example, to such subjects as the jurisdiction of states with respect to crimes committed on vessels of their own nationality in foreign waters and on foreign vessels in domestic waters, the immunity of persons exercising diplomatic or consular functions, crimes committed in countries in which consular jurisdiction still exists, or by members of an invading army or the members of aircraft.

The work is meant to be a practical treatise on the actual French law governing the subject in hand. Being satisfied, however, that the positive law of France is defective, the author takes great pains in developing the theoretical aspects of the subject. In doing so he makes excellent use of the com-

[22] P. 6.